

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

Hearing Date: May 29, 2024
Hearing Time: 9:15 a.m.
Hearing Location: Albany

IN RE:

ARDEX INTERNATIONAL COMPANY

Chapter 7
Case No. 22-10312

Debtor.

RESPONSE TO CITY OF TROY'S MOTION CONFIRMING COMPLIANCE

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

MICHAEL J. O'CONNOR, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice law in the Courts of the State of New York and the United States Bankruptcy Court for the Northern District of New York and am a partner with the law firm of O'Connor, O'Connor, Bresee & First, P.C.

2. I was appointed as Chapter 7 Trustee in this case on 4/8/2022 and am duly qualified to act as such.

3. Ardex International Company (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of the U.S. Bankruptcy Code (the "Code") with the U.S. Bankruptcy Court for the Northern District of New York on April 8, 2022 (the "Petition").

4. I submit this Response to the motion by the City of Troy Confirming Compliance with Bankruptcy Court Order Dated January 13, 2023, Docket 61, Pursuant to 11 U.S.C. § 105(a) (the "Motion").

5. The petition was filed in order to prevent an in rem tax sale from proceeding against six parcels located at 744 Pawling Avenue, 768 Pawling Avenue, 756 Pawling Avenue,

762 Pawling Avenue, Pawling Avenue (Tax Map No,112.83-3-4) and Pawling Avenue (Tax Map No. 112.84-3-4) (the “Property”). There have been not less than four offers exceeding \$1,000,000.00 for purchase of the Property. As indicated by the movant, there is only one creditor in this case which is the City of Troy for unpaid real estate taxes.

6. The Trustee attempted to sell the Property, however, because of an inartfully drawn deed into the Debtor, there were title issues. It is clear that the intent of the parties was that the partnership, Ardex International Company, owed the Property. Whoever drafted the deed, however, identified Ardex International Company and the individual partners as grantees. The Trustee believes there was an error in draftsmanship of the deed. Notwithstanding that, the marketability of the Property was potentially in jeopardy.

7. The Trustee reached out to SMPR Title Agency Inc. to obtain an opinion as to whether the bankruptcy estate would be able to convey title to the Property. Trustee was informed that it would be difficult to obtain title insurance without Quit Claim Deeds from the two partners named in the deed together with the Trustee’s Deed for Ardex International Company.

8. The two partners are brothers in their 90's and are litigating against each other in New York State Supreme Court. As a result of the title issue that arose as a result of the inartfully drawn deed, the Trustee did not oppose the City of Troy’s motion to lift the stay to pursue a tax sale.

9. The City of Troy can convey clear title without concern of the title issues raised by the Trustee.

10. There were two parcels that were not included in the City’s lift stay motion and the Trustee subsequently obtained an order abandoning his interest in those two parcels. The Trustee believes there is no question that the Property has value in excess of the unpaid property taxes, however, as interest continues to increase the indebtedness, any equitable surplus is being

diminished rapidly. At ECF Docket #55, the son of one of the partners, through their attorney, Boyle Legal LLC indicated there is \$300,000 equity cushion in the Property. At ECF Docket #38, the same partner indicated that the City of Troy was over secured. It is the Trustee's belief that the Property value does exceed the amount of the tax claims.

11. The Trustee also questions whether the City of Troy has standing to seek the relief that it is seeking. The City appears to be seeking a comfort order from this Court perhaps to insulate the City from any subsequent claims by one of the partners that the consideration being paid is inadequate.

12. The bankruptcy estate has \$22,401.99 on hand. The final report will be filed as soon as the Trustee's CPA has filed tax returns on behalf of the bankruptcy estate. There are no creditors other than the City of Troy. Once administrative fees are paid through the final report, any remaining surplus funds will be refunded to the Debtor.

WHEREFORE, based upon the foregoing, it is respectfully requested that this Court issue an Order denying the relief requested and granting such other and further relief as this Court may deem just and proper.

DATED: May 21, 2024

/s/ Michael J. O'Connor
Michael J. O'Connor, Esq.
Chapter 7 Trustee
20 Corporate Woods Boulevard
Albany, NY 12211
Telephone (518) 465-0400

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AFFIDAVIT OF SERVICE

Amanda Kurutz, being duly sworn, deposes and says that deponent is over the age of 18 years of age and that on the 21st day of May, 2024, deponent served a copy of the Response upon the following persons at the following addresses:

Edward R. Marinstein, Esq.
Marinstein & Marinstein, Esqs., PLLC
Attorneys for City of Troy New York
22 First Street, P.O. Box 155
Troy, NY 12181-0155

Ardex International Company
744 Pawling Avenue
Troy, NY 12180-6212

Christian H. Dribusch
Dribusch Law Firm
Attorneys for the Debtor
187 Wolf Road, Suite 300-20
Albany, NY 12205

Michael L. Boyle
Boyle Legal, LLC
Attorneys for Nubar Sukljian
64 2nd Street
Troy, NY 12180-3927

Terrence Christenson
Cooper, Erving & Savage, LLP
Attorneys for Sahag Sukljian
20 Corporate Woods Blvd.
Albany, NY 12211

Office of the United States Trustee
Leo O'Brien Federal Building
11A Clinton Ave., Room 620
Albany, NY 12207

(Via Court's electronic case filing system)

by depositing a true and correct copy enclosed in a postpaid properly addressed wrapper in a post office depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

/s/ Amanda Kurutz
Amanda Kurutz

Sworn to before me this 21st
day of May, 2024

/s/ Stacy Dillenbeck
Stacy Dillenbeck
Notary Public, State of New York
Qualified in Schenectady County
No. 01DI6212806
Commission Expires October 19, 2025